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JOSEPH F. SPANIOL, JR.
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No. 85-1602

In The
Supreme Court of the United States
October Term, 1985

THE STATE OF TEXAS,
Petitioner,
vs.
JOYCE ANN VAN GUILDER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I.

DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRE A STATE APPELLATE COURT TO REVIEW THE SUFFICIENCY OF THE EVIDENCE SUPPORTING AN AFFIRMATIVE DEFENSE IN ADDITION TO REVIEWING THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE STATUTORY ELEMENTS OF THE OFFENSE?

II.

DOES THERE EXIST A CONSTITUTIONAL IMPERATIVE, UNDER THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE, THAT A STATE MUST DISPROVE BEYOND A REASONABLE DOUBT EVERY FACT CONSTITUTING AN AFFIRMATIVE DEFENSE RELATING TO THE CULPABILITY OF A CRIMINAL ACCUSED?

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondent respectfully submits this her Brief in Opposition to the Petition for Writ of Certiorari filed by the State of Texas requesting review of the judgment

and opinion of the Court of Criminal Appeals of Texas entered in this proceeding on November 6, 1985.

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CITATION TO OPINIONS BELOW

Petitioner's citation of the opinions below in the Petition for Writ of Certiorari is correct.

———o———

JURISDICTION

Petitioner accurately states their allegations of Jurisdiction in their Petition for Writ of Certiorari.

———o———

STATUTORY PROVISIONS INVOLVED

Petitioner accurately states the statutory provisions involved in their Petition for Writ of Certiorari.

———o———

STATEMENT OF THE CASE

A. Statement Of The Nature Of The Proceedings And Disposition Below

The Petitioner's statement of the course of proceedings and disposition below is accurately stated.

B. Statement of Fact

Respondent agrees that the pertinent facts, as brought forth during the Respondent's trial, are accurately contained within the opinions of the Court of Criminal Appeals of Texas and the Court of Appeals for the Fourth Supreme Judicial District, San Antonio, Texas, which opinions are reproducted within the appendix of Petitioner's Writ of Certiorari.

SUMMARY OF ARGUMENT

The Court of Criminal Appeals correctly interpreted the due process provision of the Fourteenth Amendment in their review of the sufficiency of the evidence wherein a defendant has raised an affirmative defense of insanity. The proper review requires the appellate court to review the evidence on the affirmative defense by looking at the evidence in the light most favorable to the implicit finding by the jury with respect to the affirmative defense and then determine, by examining all the evidence concerning the affirmative defense, if any rational trier of fact could have found that the defendant failed to prove his defense by preponderance of the evidence.

ARGUMENTS FOR DENYING THE WRIT

A. THE DECISION BY THE TEXAS COURT OF CRIMINAL APPEALS CORRECTLY APPLIES THE HOLDING OF JACKSON v. VIRGINIA, 443 U.S. 307 (1979) AND IN RE WINSHIP, 397 U.S. 358 (1978) TO THE REVIEW OF THE SUFFICIENCY OF THE EVIDENCE WHERE THE DEFENSE RAISES AN AFFIRMATIVE DEFENSE TO A CRIMINAL ACTION.

There should remain no doubt that the Fourteenth Amendment's due process clause requires the prosecution to prove the guilt of a criminal accused "beyond a reasonable doubt". This issue was dealt with squarely by *In Re Winship,* 397 U.S. 358 (1970), wherein the Court reasoned that the due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

When the sufficiency of the evidence is challenged by the defendant upon the appeal of his conviction this court in *Jackson v. Virginia,* 443 U.S. 307 (1979) established that the appellate review must involve the review of the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In *Wilson v. State,* 654 S.W.2d 465 (Tex. 1983) the Texas Court of Criminal Appeals determined that the *Jackson* standard of review was based upon notations of due process enumerated in the Fourteenth Amendment and was thus binding on the States as a constitutional minimum of protection for criminal defendants.

At the trial below, Respondent raised the affirmative defense of insanity. TEX. PENAL CODE, 2.04d re-

quired Respondent to prove her affirmative defense of insanity by a preponderance of the evidence. On the appeal of her conviction, Respondent alleged that her conviction should be reversed because the verdict of the jury was against the great weight and preponderance of the evidence because she had established her affirmative defense of insanity by a preponderance of the evidence and further that she had established her affirmative defense of insanity as a matter of law.

The Texas Court of Criminals Appeals considered that the issue raised in Respondent's appeal was to determine the proper standard of review to be used by the Court of Appeals in criminal cases in general and the standard of review in criminal cases involving an affirmative defense in particular. The Texas Court of Criminal Appeals recognized the requirement to preserve the minimum due process protection established in *Jackson*, supra and *Winship*. Further it was determined that the Court of Appeals must be allowed to review the sufficiency of the evidence to support the defendant's affirmative defense as well as the sufficiency of the evidence to support the conviction. In order to abide by the *Jackson* test the Court of Appeals must make some type of determination on the issue of insanity when that affirmative defense is raised by evidence by the defendant. Should a Court of Appeals fail to review the sufficiency of the evidence within a due process standard then the Court of Appeals would adopt the finding of the jury on the affirmative defense even if the rational trier of fact would not have done so.

The Texas Court of Criminal Appeals adopted a standard of review consistent with constitutional law

which affords a proper appellate review consistent with the due process application adopted by the Court in *Jackson* and which reserves the inviolability of the jury as fact finders in Texas Criminal law. The standard adopted by the Texas Court of Criminal Appeals is:

> "therefore, we hold that in reviewing a case involving an affirmative defense, the court of appeals must review the evidence on the affirmative defense by looking at the evidence in the light most favorable to the implicit finding by the jury with respect to the affirmative defense and then determine by examining all the evidence concerning the affirmative defense if any rational trier of fact could have found that the defendant failed to prove his defense by a preponderance of evidence. The court of appeals is limited in its review using this preponderance standard to evidence submitted on the issue of the affirmative defense in question. This review is called for when the defendant is contesting the sufficiency of the evidence to support his conviction because of his assertion that he adequately proved his affirmative defense. It is important to note that this analysis does not involve the appellate court in any fact finding function. The test evaluates the legal sufficiency of the evidence using a legal standard. There must be no reweighing or reclassifying of the evidence by the Appellate Court." *Van Guilder v. State,* — SW2d — (slip opinion pg 7, 899-84- Tex. Crim. App. 1985)

Contrary to the position assumed by Petitioner, the Court of Criminal Appeals has carefully avoided establishing any standard of review of the sufficiency of the evidence of an affirmative defense that would violate the due process clause of the Fourteenth Amendment and the standards adopted by this court in *Jackson, supra* and *Winship, supra.* The Court of Criminal Appeals did not engage in a fact finding expedition to reverse Respond-

ent's conviction. Any other standard of review which refuses to adopt a legal sufficiency test of the evidence establishing the affirmative defense would allow the jury's verdict to remain no matter how irrational the verdict might be.

This Court should deny the Writ of Certiorari because the Texas Court of Criminal Appeals did not adopt an erroneous application of the holdings of *Jackson, supra* and *Winship, supra* to the facts of Respondent's conviction.

B. THE HOLDING OF THE COURT OF CRIMINAL APPEALS IN TEXAS DOES NOT CONFLICT WITH PATTERSON v. NEW YORK, 432 U.S. 197 (1977) AND LELAND v. OREGON, 343 U.S. 790 (1952).

The Court of Criminal Appeals of Texas reviewed all the evidence presented concerning Respondent's affirmative defense of insanity and determined that no rational trier of fact could have found that responndent failed to prove the affirmative defense by a preponderance of the evidence. The Court of Criminal Appeals carefully recognized the test established in *Jackson v. Virginia,* 443 U.S. 307 (1979) and properly applied the standard of appellate review established by the *Jackson* court to all the relevant evidence produced at Respondent's trial.

The Texas Court of Criminal Appeals did not act as a fact finder and did not reweigh or reclassify the evidence. Rather, the review, as to the evidence offered to establish the affirmative defense of insanity, was to determine whether or not any rational trier of fact could have arrived at a conclusion other then the fact that Appellate had established her affirmative defense by a preponderance of the evidence. A jury that totally disregards credible and

uncontradicted evidence can not be considered to have acted as a rational trier of fact.

The Court of Criminal Appeals did not violate the holdings of *Patterson, supra* and *Leland, supra* in its opinion. The Court of Criminal Appeals determined that the Court of Appeals must be allowed to review the sufficiency of the evidence to support a defendant's affirmative defense as well as the sufficiency of the evidence to support the conviction. To do so otherwise, would violate a defendant's constitutional right to review the sufficiency of the evidence to support his conviction. This procedure does not require the State to disprove the affirmative defense. Nor, does this procedure shift the burden to the State to disprove the affirmative defense. Rather, it is a procedure to adopt the minimum standards of protection within the due process clause of the Fourteenth Amendment to the U.S. Constitution. And this procedure only goes so far as to avoid the adoption by appellate court of an implicit finding by a jury on an affirmative defense even if that finding becomes irrational.

The Texas Court of Criminal Appeals in reviewing the evidence offered by Respondent, to establish the affirmative defense of insanity, did not act as a thirteenth juror. That evaluation of the evidence was made to determine if the finding by the jury was rational. The Texas Court of Criminal Appeals observed that the State offered no evidence of any kind to rebut the defensive theory of insanity. The Court of Criminal Appeals observed that the State at the trial, outside the presence of the jury, admitted that their own employed psychiatrist concurred with the experts of Respondent, that Respondent was legally insane at the time of the offenses. Furthermore,

Appellant was convicted of five criminal offenses arising out of the same continuous offenses. The jury returned a verdict of not guilty by reason of insanity to four of those offenses but refused to adopt the finding that Appellant was insane in one of those five offenses. Evidence offered by Respondent consisted of five reputable experts who all agreed that Respondent was insane. The State offered no conflicting evidence, nor did the State attempt to discredit the evidence of Respondent by cross-examination or otherwise.

The conclusion by the Court of Criminal Appeals under the circumstances was that no rational trier of fact could have arrived at any other conclusion other then that Respondent had established her affirmative defense of insanity by a preponderance of the evidence. This was not an unfinding of the jury's verdict, but was rather a finding that the verdict of the jury was irrational. In such a situation, *Jackson, supra* requires that a defendant's conviction be reversed.

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CONCLUSION

The Petition for Writ of Certiorari should be denied because the decision below does not conflict with the decisions of the United States Supreme Court but, rather follows squarely in line with the most recent opinion of this court regarding the review of the sufficiency of the evidence to support a conviction.

Respectfully submitted,

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